

## Individuals, Norms, and the Basic Structure

### I. Introduction

Critics of liberals such as Sally Haslanger and G. A. Cohen have charged mainstream liberal egalitarian theories including John Rawls's theory of justice as not able to account for the importance of cultures and ideologies due to their statist orientation. Haslanger points out that problematic cultures at least sometimes are at the heart of injustice.<sup>1</sup> G. A. Cohen developed a critique of Rawls by arguing that a just society should have an egalitarian ethos in addition to a just basic structure.<sup>2</sup> These critiques target one of the central tenets of Rawlsian theories of justice with regard to the scope, or the subject matter of justice. Rawls famously argued that principles of justice apply only to the basic structure, which is "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."<sup>3</sup> Many have interpreted Rawls as understanding major institutions constituting the basic structure as formal institutions - the political constitution and the principle economic and social institutions – and have subsequently defended this view. Gina Schouten carves out the conceptual space by labeling this interpretation as the "stingy view" of liberalism – only institutional arrangements are subject to direct demands of justice while culture and individual behaviors can constitute a diminishment of justice only by way of institutional change.<sup>4</sup> Alternatively, conceptually moderate liberals consider institutional arrangements and culture as under the purview of justice but not individual behaviors. While conceptually

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<sup>1</sup> Sally Haslanger, "I—Culture and Critique." *Aristotelian Society Supplementary Volume* 91 (1):149–73.

<sup>2</sup> Cohen, G. A. "Where the Action Is: On the Site of Distributive Justice." *Philosophy & Public Affairs* 26, no. 1 (1997): 3–30. Cohen, G. A. *Rescuing Justice and Equality* (Harvard University Press, 2008).

<sup>3</sup> John Rawls, *A Theory of Justice* (Harvard University Press, 1999), 6.

<sup>4</sup> Gina Schouten, *manuscript in progress*.

permissive liberals such as Cohen subject all three things –institutions, cultures, and individual behaviors to direct demands of justice.

In this paper, I have two main goals. The first is to argue that we should at least be conceptually moderate liberals because social norms should be considered as part of the basic structure even on the Rawlsian understanding of the basic structure. In the next sections, I refine notions such as culture, ethos, and ideology that are at the center of many critiques of Rawls by importing the distinctions between personal norms, descriptive norms, and social norms made by philosophers and social scientists.<sup>5</sup> The account of social norms I adopt has the virtues of being conceptually clear and operationally powerful.

Using results from empirical research, I then argue that at least some social norms meet the Rawlsian criteria of the basic structure because they significantly affect the distribution of fundamental rights and duties and determine the division of advantages from social cooperation. Their effects can be “profound and present from the start” of an individual’s life, which is one of the reasons Rawls gave for viewing the basic structure as the primary subject of justice.<sup>6</sup> Moreover, like formal institutions, they exert coercive force on individuals, to a greater or lesser extent depending on situations and other factors, through mechanisms including internalization, negative social sanctions, positive social rewards, and individuals’ recognition of the legitimacy of others’ expectations and the desire to please others by doing what others expect and prefer one to do. In addition, social norms meet the conditions of stability and publicity which are important considerations in Rawlsian theories of justice. I give paradigmatic examples of social norms as

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<sup>5</sup> Christina Bicchieri, “The Rules We Live By”, in *The Grammar of Society: The Nature and Dynamics of Social Norms* (Cambridge University Press, 2005), 1.

<sup>6</sup> Rawls, *A Theory of Justice*, 7.

part of the basic structure – those sustaining phenomena such as market-maximizing<sup>7</sup>, gendered division of labor, and social stigmas – to illustrate my case. Social norms also fit especially well with an alternative characterization of the basic structure, by A. J. Julius, as globally consequential, collectively alterable, individually unchosen, systematically action-shaping and goods-distributing.<sup>8</sup> Furthermore, we not only underappreciate how some social norms have the same essential characteristics as formal institutions do. We also have other moral and political reasons to subject them to the purview of justice, including our needs for a comprehensive approach to normatively evaluate social norms, and theoretical tools to develop theories of legitimate political interventions on norms.

The second goal I have is to lend support to inclusive liberals and discuss the difficult question that has haunted inclusive liberals – what the content and the extent of individual duties of justice are. I do not attempt to provide a complete answer to this question, but I hope to advance our understanding by making substantial suggestions on how to answer this question. Even if my arguments in pursuit of the second goal fail to persuade stingy liberals, I hope that my discussion can at least highlight the moral and political significance of social norms, clarify the conceptual space on the issue of what demands justice makes on individuals, and lend support to a more expansive view on the issue. While I pursue these two theoretical aims, I respond to proponents of the stingy view such as Schouten, Rawls, Julius, and Samuel Scheffler.

## **II. Social norms – what and why?**

In developing a cultural critique of liberal egalitarian theories, especially those that endorse the stingy view or has a statist focus, Haslanger defines a culture as a set of social meanings that

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<sup>7</sup> This is the kind of behavior Cohen focuses on when discussing egalitarian ethos – talented workers demanding special and maximized incentives to be productive and efficient workers.

<sup>8</sup> A. J. Julius. “Basic Structure and the Value of Equality”, *Philosophy and Public Affairs* (2003) 31 (4):321-355.

shapes and filters how we think and act.<sup>9</sup> Ideologies are constituted by those problematic networks of social meanings. At the heart of many kinds of injustice, say, racial injustice, is a structure of social relations that is sustained by ideology. In developing a critique of Rawls's theory of justice, Cohen argues that a just and well-ordered society needs to have an egalitarian ethos, which effectively shapes individuals' productive decisions, in addition to a just basic structure defined by the statist (or stingy) view.<sup>10</sup> However, Haslanger's concept of social meanings is not clearly defined. Cohen understands the ethos of a society as "the set of sentiments and attitudes in virtue of which its normal practices, and informal pressures, are what they are."<sup>11</sup> But the overly broad and individualistic nature of the concept makes it difficult to consider the ethos as a part of the basic structure. We might run into the trouble of including all individual sentiments and attitudes into the basic structure. The concept I would like to focus on – social norms – overlaps with Haslanger's concepts of social meanings and ideologies and Cohen's concept of ethos. But there are several advantages for diverting our attention to social norms.

First, the account of social norms that I use have operational definitions and testable consequences. Thus, the model is explanatorily and predictively powerful. It is also widely used by social scientists and extensive empirical research on the origin, evolution, and impact of social norms and mechanisms of norm-following have been produced using the account. This constructivist account of social norms characterizes an existing social norm in a population  $P$  as a behavioral rule  $R$  for situations of type  $S$ , which an individual  $i$  prefers to conform to on the condition that: (a)  $i$  believes that a sufficiently large subset of  $P$  conforms to  $R$  and either (b)  $i$

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<sup>9</sup> Sally Haslanger, "I—Culture and Critique." Aristotelian Society Supplementary Volume 91 (1):149–73.

<sup>10</sup> See, for instance, G. A. Cohen (1997) and G. A. Cohen (2008)

<sup>11</sup> Cohen 1997, 28.

believes that a sufficiently large subset of  $P$  expects  $i$  to conform to  $R$ , or (b')  $i$  believes that a sufficiently large subset of  $P$  expects  $i$  to conform to  $R$ , prefer  $i$  to conform, and may sanction behavior.<sup>12</sup>

Second, by clearly distinguishing between the concepts of social norms, descriptive norms, and conventions, the account highlights features of social norms that make them especially suitable to be considered as a part of the basic structure. I will soon explain more in detail why this is so and how it is theoretically and practically important. But briefly, a descriptive norm, such as fashions and fads, is a regular behavioral pattern that one prefers to follow because one believes that a sufficiently large subset of the population conforms to the behavioral pattern. Conventions, for instance, signaling systems or dressing codes, are a stable kind of descriptive norms. One crucial distinction between social norms and descriptive norms is that one does not need to feel that others expect one to conform to descriptive norms. Conformity to descriptive norm is always motivated by self-regarding reasons in the sense that we conform to descriptive norms because it makes life easier, or we would like to imitate others in ambiguous or uncertain situations. In contrast, when a social norm exists, one believes that a critical mass of people in the population expect one to conform to the social norm and may even sanction conformity. Thus, people may conform to a social norm due to expectations of positive social rewards, negative social sanctions, and individuals' recognition of the legitimacy of others' expectations and the desire to please others by doing what others expect and prefer one to do.<sup>13</sup> We tend to experience fear when we worry about the potential negative sanctions of violating a norm and shame when we do violate it.<sup>14</sup> Slightly departing from Bicchieri, I take internalization as another

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<sup>12</sup> This is a slightly abbreviated version of Bicchieri's definition of existing social norms on p. 11 in *The Grammar of Society*.

<sup>13</sup> Bicchieri (2005).

<sup>14</sup> *Ibid*, 1-54.

mechanism of norm compliance.<sup>15</sup> After we have internalized a norm, the thought of violating or the actual violation of a norm produces guilt or discomfort even if we are not consciously motivated by positive rewards, negative sanctions, or others' expectations.

These mechanisms of norm compliance demonstrate the coercive power of social norms. Surely the mechanisms are not entirely the same as mechanisms of coercion in the case of formal institutions that are traditionally viewed as coercive such as the legal system backed up by state power. But it seems to me that what is essential for deeming an arrangement as having coercive power is not the exact forms of mechanisms of compliance but the coercive and powerful *impact* on individuals' behaviors, desires, and aspirations, that originates from the social arrangements. Social norms are coercive to some extent because they can act as external constraints.<sup>16</sup>

One distinctive and essential feature of the basic structure, which also motivates Rawls's claim about the primary subject of justice, is that the basic structure "shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are."<sup>17</sup> Many social norms have this kind of impact on individuals. The norms sustaining gendered division of labor shapes the desires, aspirations, and behaviors of both women and men. The norms sustaining social stigmas likewise shape the desires, aspirations, and behaviors of both the stigmatized and the stigmatising people in various aspects of their lives from the public domains to the private domains. Although psychologists tend to understand stigmatising as psychological processes of individuals, some sociological accounts of stigmas have viewed stigma as a form of power, material force, and social practice.<sup>18</sup>

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<sup>15</sup> See empirical work on internalization as a mechanism of norm compliance in, for instance, Adam Morris and Fiery Cushman. "A Common Framework for Theories of Norm Compliance." *Social Philosophy and Policy* 35, no. 1 (2018): 101–27.

<sup>16</sup> Ryan Muldoon. "Understanding Norms and Changing Them." *Social Philosophy and Policy* 35, no. 1(2018): 128–48.

<sup>17</sup> Rawls, 259.

<sup>18</sup> Imogen, Tyler. *Stigma: The Machinery of Inequality* (London: Zed Books Ltd, 2020).

One may object to the coercive feature of social norms by pointing out that not all individuals follow social norms all the time. Some individuals are able to and voluntarily choose to defy norms sometimes. This is indeed true. But coercive institutions like the legal system does not guarantee compliance either. Compliance is affected by other rules or norms, attitudes, or environmental factors in both cases of legal rules and social norms. Psychologists have reported that environmental stimuli can cause major changes in the kinds of behaviors that have established norms around and that we usually expect to manifest some consistency.<sup>19</sup> Situational factors may attenuate the impact of norms on behavior. But situational factors can also increase the effect of norms on behavior through, say, making a norm salient.<sup>20</sup> I suggest that coercive power should be viewed as a matter of degree. The more entrenched and coercive a social norm is, the stronger reason we have for considering it as part of the basic structure.

Many social norms exert significant impact or even coercive power on individuals, but not all of them should be included into the basic structure. Another essential feature of the basic structure that motivates Rawls to deem it as the primary subject of justice is its profound effect from the start of individuals' lives.<sup>21</sup> Paradigmatic examples of social norms as part of the basic structure such as those sustaining gendered division of labor, social stigmas, and market-maximizing behaviors affect the distribution of fundamental rights and duties and determine the division of advantages from social cooperation. An egalitarian ethos shaping productive decisions of talented individuals such as how much monetary incentive they demand for them to work hard can have significant impact on the degree of economic inequality in a society.<sup>22</sup>

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<sup>19</sup> Bicchieri, 45-46.

<sup>20</sup> Bicchieri, 46-51.

<sup>21</sup> Rawls, 7.

<sup>22</sup> To be clear, I do not think that what Cohen means by an egalitarian ethos is only comprised of social norms. Individuals who live in a just society with an egalitarian ethos in Cohen's sense are also internally motivated by an appropriate and sufficient kind of sense of justice and concerns for others' wellbeing. I will say more about

Gendered division of labor - a division of labor sustained by social norms between the sexes in which substantial proportions of tasks are coded as more appropriately done by men or by women – results in inequality between men and women in their access to important goods that are desired by both sexes, such as career development, avoiding poverty, and even the value of political rights.<sup>23</sup> Social stigmas, even when they only exert influence on individuals' preferences and behaviors in personal relationships, can create significant inequality of social primary goods such as relational resources and social bases of self-respect.<sup>24</sup>

To make a strong case for subjecting social norms to the evaluation of justice, we need to consider two additional features of the basic structure in Rawlsian theories of justice – publicity and stability. First, Rawls argued that the conception of justice governing the basic structure of a well-ordered society needs to be public in the sense that it is “publicly acknowledged and fully effective moral constitutions of social life.”<sup>25</sup> Second, the just basic structure of a well-ordered society needs to be able to remain stable. Although Rawls's discussion of the conditions of publicity and stability is concerned with the specific conceptions of justice that can fulfill these two conditions, when we consider the conceptually prior question of what arrangements should be included into the basic structure, these arrangements at least need to be able to remain public and stable, when they are governed by reasonable conceptions of justice. Social norms, unlike personal norms,<sup>26</sup> descriptive norms or mere convergence of behaviors, meet these two

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individuals' duty of justice and its relation to their sense of justice in the latter half of the paper. But I think social norms play a non-negligible role in the creation and maintenance of Cohen's egalitarian ethos.

<sup>23</sup> See, for instance, Susan Okin. *Justice Gender and the Family* (Basic Books, 1989) and Gina Schouten, *Liberalism, Neutrality, and the Gendered Division of Labor* (Oxford University Press, 2019). The division of labor can also be sustained by formal institutions such as legal rules, but I limit my discussion to the division sustained by social norms for the purpose of this paper. And social norms do have the power to maintain the division even with equal legal protections for both sexes.

<sup>24</sup> Work in progress. See more on relational resources/goods and the unequal distribution of them in Chiara Cordelli, “Distributive Justice and The Problem of Friendship”. *Political Studies* 63 (3):679-695 (2015).

<sup>25</sup> Rawls, 115.

<sup>26</sup> These are norms such as brushing teeth or wearing a coat in the winter and see Bicchieri, 21-22.



conditions. The account of social norms that I am using is built upon the empirical and normative expectations of individuals on other people's compliance with the norms and their preference for norm-complying behaviors. So it naturally fulfills the publicity condition.

Furthermore, social norms are stable because when a social norm exists, it is an equilibrium.<sup>27</sup> Here, the equilibrium refers to a situation in which each individual's action is the best reply to everyone else's action. It is a situation of stable mutual adjustment because everyone anticipates everyone else's behavior and their anticipations would turn out to be correct. Each norm-complying behavior strengthens the norm and confirm these expectations. So as time goes by these expectations become more ingrained. A situation in which not enough people have these empirical and normative expectations would be a situation in which not enough people comply to the norm. This is an unstable situation in which a social norm is lacking.

An alternative defense of the primacy of the basic structure utilizes a theory of wrongful framing. On this view, a group of people *combine* for a profile, which is a form of *framing*, if for every member of the group, (1) her decision to act her part of that profile is supported by her belief that the others will act their parts; (2) this belief of hers is supported by agreements she has reached with the others or by conversations she had with them or by her observation of others' actions; and (3) she has promoted others' beliefs that she will act her own part of the profile.<sup>28</sup> A person's *situation* is "a list of factors relevant to the intentional explanation of her stance in interaction" and the population can be partitioned into *types* "such that when people's situations are stylized in certain ways, all the members of a type share the same situation, while the

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<sup>27</sup> Bicchieri, 22-23.

<sup>28</sup> A. J. Julius, 329.

members of different types face relevantly distinct ones.”<sup>29</sup> A basic structure, on this view, is “a distribution of the population over types and an assignment of situations to types that are together reproduced by the distribution of actions they induce.”<sup>30</sup> A basic structure is characterized by the following features: globally consequential, collectively alterable, individually unchosen, systematically action-shaping and goods-distributing.<sup>31</sup> These features of the basic structure render it the kind of framing that cannot be justified in any other way except by the distribution of benefits that it produces. The distribution of global goods needs to be universally acceptable. It is for this reason that the basic structure is subject to the evaluation of liberal egalitarian principles.

Note first that the constructivist account of social norms I adopt fits well with the definitions of combining and the basic structure in the above picture. At least some social norms are globally consequential, collectively alterable, individually unchosen, systematically action-shaping and goods-distributing.<sup>32</sup> This provides us another reason to consider them as part of the basic structure besides from the Rawlsian picture. I will dispute implications of the framing account of the basic structure on individual duties of justice in later sections. But for now, my purpose is to show that social norms have structural features that render them appropriate to be included into the basic structure on multiple accounts of what the basic structure is and why it should be the subject of justice.

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<sup>29</sup> Ibid, 330.

<sup>30</sup> Ibid, 330.

<sup>31</sup> Ibid, 337.

<sup>32</sup> Among these features, being collectively alterable, individually unchosen, and systematically action-shaping are features of most social norms almost by definition. See more in Bicchieri (2005). Globally consequential and goods-distributing are contingent features depending on the specific norm. But as we have seen, norms such as those sustaining gendered division of labor, social stigmas and market-maximizing have been globally consequential and goods-distributing in many societies.

I would like to offer some additional moral and political reasons to consider social norms as part of the basic structure. First, social norms are hard to evaluate normatively. We have strong intuitions that some social norms are bad and should be eradicated, such as the norms sustaining female genital mutilation.<sup>33</sup> We have worries about some other social norms, for instance, the norms sustaining gendered division of labor and stigmas against certain groups of people. But theorists have struggled to find a systematic and unifying normative framework to evaluate the badness of social norms. Norms usually perform functions such as coordinating and regulating behaviors. They can sometimes enhance efficiency. And since norms usually are entrenched in our lives and shape our normative and moral judgments, we need to be careful about parochialism – the tendency to evaluate any alien norms as bad,<sup>34</sup> or in other words, being in the grip of local (and wrong) ideologies. Evaluating norms by the harm they cause, their efficiency, their impact on welfare all run into problems one way or another.<sup>35</sup>

Besides problems that have been identified in the literature, evaluating norms by their direct harm on an individual basis tends to neglect the structural effects of social norms. Individual interactions that impose no harm, justified, or excused harm may create widespread, unintended, and significant consequences when combined together.<sup>36</sup> In addition, frameworks focusing on overall welfare or comparative-functional analysis<sup>37</sup> cannot address the issue of distribution, or conflicts of interests. That is, many norms improve the welfare or are welcomed by some groups but are harmful to and unwelcomed by others. A comparative-functional analysis approach

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<sup>33</sup> An increasing consensus has been reached that female genital mutilation is sustained by social norms. See more on efforts to change the norms in Cristina Bicchieri and Peter McNally, “Shrieking Sirens: Schemata, Scripts, and Social Norms. How Change Occurs.” *Social Philosophy and Policy* 35, no. 1 (2018): 23–53.

<sup>34</sup> John Thrasher, “Evaluating Bad Norms.” *Social Philosophy & Policy*, vol. 35, no. 1, 2018, pp. 196-216.

<sup>35</sup> Thrasher (2018).

<sup>36</sup> Social stigmas, including racism, sexism, ableism, and fat-phobia affecting people’s preferences and behaviors in personal relationships and interactions are one example.

<sup>37</sup> Thrasher (2018).

compares the status quo with feasible alternatives and asks if one of the feasible alternatives is a Pareto improvement. But proponents of this approach have not given satisfactory accounts of what alternatives should count as feasible and how to individuate functions. Even if this approach offers helpful insights on non-ideal theorizing by limiting comparisons to feasible alternatives in an attempt to produce action-guiding results, we may also question if such a focus is too narrow for complete evaluations of the normative status of all social norms.

Including social norms into the basic structure and thus the purview of justice is a particularly useful approach to evaluate the normative status of norms. Theories of justice are apt to, or at least aim at addressing the issues of distribution and conflicts of interests between groups. A justice framework is the best way to account for the structural effects of social norms. Given the coercive and other features of social norms that I have discussed, it is also appropriate to the nature of this social kind to subject it to the evaluation of justice. And we would be able to evaluate social norms from the perspectives of both ideal and non-ideal theorizing. We would need to rely on a particular conception of justice and therefore a normative standpoint to make specific judgments about norms. But in contrast to those who are opposed to evaluating norms from a normative standpoint, I think a normative theory or standpoint is necessary for the project of normatively evaluating norms. Some existing frameworks of justice are also able to incorporate and provide helpful guidance on the balancing of various social values including distributive or aspirational justice, efficiency, coordination, and community.<sup>38</sup>

Social norms may impede with law enforcement or the achievement of policy outcomes, for instance, norms motivating and enabling people to use numerous subtle and legal ways to

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<sup>38</sup> See Schouten's framework of justice in manuscript in progress.

maintain segregation in housing, education, and workplace after Civil Rights Act.<sup>39</sup> Compared to decades ago, nowadays gendered division of labor is mostly maintained by social norms and the seemingly free choices of individuals following the norms rather than inequalities in family laws or gender discrimination in the workplace.<sup>40</sup> Sometimes the norms themselves are heinous enough that policy-makers and concerned others would like to change them. But since social norms are stable equilibria, they can be hard to change. For cases involving “pluralistic ignorance”- when everyone’s public expressions of preferences are different from their private preferences, public programs informing people of others’ real preferences may be enough to change behaviors and norms.<sup>41</sup> But for many other cases, to effectively change social norms, we have to consider state interventions including incentives and sanctions that directly target social norms and individual behaviors.

Nonetheless, justifying state interventions and drawing lines between legitimate and illegitimate interventions are daunting normative tasks. Some theorists have attempted to justify state coercion aiming at changing norms using a Millian approach. The “tyranny of the prevailing opinion” can be a source of harmful coercion as powerful as the “tyranny of the magistrate” and state coercion is justified to combat the “tyranny of the prevailing opinion” when it violates the harm principle.<sup>42</sup> However, the harm principle itself is too coarse as a theory of legitimacy. It cannot address the problem of distribution – when some social norms create advantage and benefits for some groups while causing disadvantage and harm to others. It also

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<sup>39</sup> See, for example, Richard Rothstein, *The Color of Law: a Forgotten History of How Our Government Segregated America* (New York : Liveright Publishing Corporation, 2017).

<sup>40</sup> See, for instance, Richard Breen and Lynn Prince Cooke. “The Persistence of the Gendered Division of Domestic Labour.” *European Sociological Review* 21, no. 1 (2005): 43–57 and Renzo Carriero, “The role of culture in the gendered division of domestic labor: Evidence from migrant populations in Europe.” *Acta Sociologica*, 64(1), 24–47.

<sup>41</sup> Binge drinking on college campus and female genital mutilation are likely examples of this. See Cristina Bicchieri and Peter McNally (2018).

<sup>42</sup> Muldoon (2018).

does not tell us how to adjudicate between the coercion of the state and the coercion of norms when both can be harmful to some, or when one is harmful to a group while the other is harmful to another group.

Schouten develops a politically liberal justification for state interventions targeting norms sustaining gendered division of labor. She argues that distributive justice and social equality cannot justify interventions such as intrusive family support policy. Political interventions to disrupt norms sustaining gendered division of labor are justified when the norms threaten individuals' autonomy and therefore threaten free and equal citizenship. On the basis of citizenship interests, any just politically liberal society must ensure "genuinely available opportunities" to live out a gender egalitarian lifestyle for all citizens. Political interventions are legitimate and demanded if gender norms and social institutions foreclose the genuine availability of a gender egalitarian lifestyle. Note that Schouten endorses a theory of legitimacy based on citizenship interests which include mutual respect between free and equal citizens.

However, the degree that a social norm threatens individuals' autonomy varies case by case. Some social norms do not completely foreclose the genuine availability of any lifestyle, for instance, those sustaining social stigmas which manifest in individuals' personal relationships and interactions. Personal relationships may be less likely to form between certain groups due to stigmatizing attitudes, but they can still be genuinely available choices for all. Nonetheless, we have reasons to deem these stigmas as unjust social norms according to major theories of justice and may support certain kinds of political interventions to combat the stigmas. Social norms that govern productive decisions, such as the amount of monetary incentives one demands to be a productive worker, do not seem to threaten anyone's autonomy in any straightforward sense. But those who see the ethos of "market maximizers" as deeply problematic and incompatible with a

just society can still deem them as unjust, if we include social norms into the basic structure and subject them to the evaluation of justice.

Schouten briefly suggests that stingy liberals are able to condemn problematic social norms as “justice-impeding” even though they can never be unjust.<sup>43</sup> But it is unclear how the category of “justice-impeding” can fit into her framework of verdictive justice which includes a relational egalitarian theory of legitimacy that acts as a filter of the demands made by aspirational justice and other social values. Moreover, some social norms that can produce unjust distribution of important goods may not erode the justice of formal institutions. Although they usually tend to, it remains a possibility some would not. If people are sufficiently good at separating their personal lives from their public lives, stigmas influencing individuals’ personal relationships and interactions may not have any effect on formal institutions and individual behaviors in those institutions. But in so far as the stigmas acting in personal realms generate unjust distribution of social primary goods including relational goods and social bases of self-respect, we have reasons to object to the stigmas and may legitimately use state interventions to change them. The upshot is that it is normatively risky and inadequate to confine our condemnation of social norms only to cases that involve erosion of formal institutions.

One advantage of evaluating social norms directly from the perspective of justice is that the conceptual relation between justice and legitimacy is a controversial issue. Some theories of legitimacy are less restrictive than the one that Schouten endorses. And some believe that political interventions aiming at reforming an unjust part of the basic structure can be legitimate simply because of the injustice.<sup>44</sup> The theoretical approach I have been arguing for in this section

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<sup>43</sup> Manuscript in progress.

<sup>44</sup> For instance, Jean Hampton (1998) and Allen Buchanan (2002) define legitimacy as a criterion of minimal justice. Some raise skepticism about legitimacy’s supremacy over justice – see Stemplowska and Swift 2018, who argue against the view that “democratic decisions are permissibly enforceable unless they are *gravely* unjust – perhaps

not only gives us a powerful normative tool to evaluate social norms. It also opens up a wide array of possibilities to develop theories of legitimate political interventions to change social norms.

Scheffler raises a problem for Cohen's argument against Rawls's view of the subject matter of justice. Scheffler claims that in arguing that it is arbitrary for Rawls to treat the basic structure (as Rawls understood it) as the primary subject of justice, Cohen overlooks two other reasons that Rawls gave. One is that the basic structure shapes people's wants and aspirations. The other is that "a just basic structure is necessary to ensure the background justice of economic transactions, since no feasible rules of individual conduct are adequate for that task."<sup>45</sup> I have argued above that some social norms do shape people's wants and aspirations. They also meet the second condition that Scheffler draws our attention to. No feasible rules of individual conduct are adequate for ensuring the background justice of economic transactions because of epistemic constraints on individuals. It is hard for individual actors in economic transactions to know the effects of their actions on the global distribution of economic goods let alone significantly changing the distribution. Of course, individuals' abilities in doing these things vary. Some individuals have much more knowledge, power, and resources to exert influence on the global distribution of economic resources. But the problem is that it is hard for individuals to *ensure* justice without background institutions that are coercive to various extents.

Social norms act in a way similar to background economic institutions. When a social norm exists, it is sustained by a sufficient large number of people's empirical and normative expectations. Individuals are also epistemically limited in the sense that they cannot be sure how

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when they blatantly violate basic human rights" (Stemplowska and Swift, 3, italics theirs; for an original statement see Rawls 1993, 428).

<sup>45</sup> Samuel Scheffler, "Is the Basic Structure Basic?", 121.



changes in their expectations and behaviors would affect other people's expectations and behaviors. Motives and expectations driving individual behaviors are hard to decode from an outsider's perspective. A norm-defying behavior may not be able to convey effectively to others about one's motives and expectations. And even if it does sometimes, the social norm can still exist and exert power on a population if sufficient people meet conditions (a) and (b) in the account of social norms that we use. It may seem that when most people divide domestic and labor-market work in a gender egalitarian way, we do not need to worry about gendered division of labor as a social phenomenon or any social norms related to it. But this is so because of the just gendered norms (and formal institutions) governing and *ensuring* individuals' egalitarian choices that we take for granted and thus inconspicuous. When unjust norms in a domain cease to exist, what ensure just background structure are just norms, even if they are not overtly visible. Recall that descriptive norms and coincidental convergence of behaviors are unstable. Just patterns may be present for a period of time without just social norms but we cannot say that justice is *ensured* in this case. When just social norms exist, we can say that they are sustained by individual behaviors or even partly constituted by individual behaviors and expectations. But social norms are more than a mere congregation of individual behaviors. It can be ontologically distinguished from a sum of individual behaviors by at least the power and influence that it exerts on individuals.

Scheffler raises another good question regarding Cohen's arguments for an egalitarian ethos. If as Cohen argues, a strict interpretation of the difference principle is the most reasonable interpretation and inequality created by incentive payments to motivate market-maximizers is unjust, why cannot the government implement the strict interpretation by itself through taxing incentive payments at 100% or simply prohibiting incentive payments? Scheffler claims that

Cohen did not explain why an ethos is needed for the strict difference principle to prevail. I will attempt to provide several answers some of which would be in the spirit of what I take Cohen to have had in mind.

On Scheffler's proposal, the coercive formal institutions of the state take on the responsibility to implement the strict difference principle. But even Scheffler and Rawls have to admit that for this vision of the well-ordered society to be stable, individuals need to support the state institutions that implement the strict difference principle, which taxes incentive payments at 100% or prohibit incentive payments. But it seems that if we suppose talented workers to wholeheartedly support these measures, these people would not demand incentive payments in the first place and the laws prohibiting or taxing incentive payments would be redundant. Not only would they be redundant, they would also be inefficient and hard to design because the amount, or the ratio of payments that should be subject to taxation and the appropriate caps on payments are determined by how much incentives talented workers would demand in the counterfactual situation in which they lack the necessary sense of justice. These numbers would need to be derived from estimations of hypothetical psychological profiles and would be extremely hard if not impossible to know in Scheffler's version of the well-ordered society. Therefore, corresponding tax and wage laws would at best approximate the just distribution governed by the strict difference principle even in this well-ordered society. From the perspective of non-ideal theorizing, in a society more like ours which is not well-ordered, and many talented workers do demand incentive payments which creates enormous and unjust inequality (as Scheffler assumes), it would be extremely difficult to pass laws ensuring compliance with the strict difference principle through democratic processes without some degree of egalitarian ethos already prevailing.

Another problem of this general approach to rely only on formal institutions to ensure background justice is that while it may be feasible to use tax and wage laws to implement the strict difference principle in the economic domain, it would be infeasible and undesirable to use only formal institutions to ensure justice in some other domains, for instance, within the family or personal relationships and interactions. Concerns about privacy violations, intrusiveness and bureaucratic difficulties and costs would likely trump reasons in support of those laws or act as deontic constraints preventing those laws to be justified. In certain domains of our lives, appropriate ethos, or social norms, are necessary and better ways to ensure background justice than formal institutions.

### **III. Individual Duties of Justice**

Before examining the view of “permissive liberals”, which include individual conducts as well as social norms into the basic structure and under the direct purview of justice, we need to be clear about what this view actually amounts to and what views its opponents hold. Opponents of this view such as Schouten, A.J. Julius, Scheffler, and perhaps Rawls, do not argue that individuals do not have any duties of justice. In fact, most of them would agree with Rawls that individuals have natural duties to support and promote a just basic structure. Schouten claims that justice asks us, as individuals, to support just institutions and condemns us when we fail to do so. But justice does not ask us to “monitor our behavior and avoid all acts that contribute to the erosion of the values – or to a *culture* that inhibits those values – that just institutions are arranged to realize.”<sup>46</sup> This is A.J. Julius,

The justice of a basic structure entails that I would do wrong to promote it for the sake of goods that it promises me. But my action will draw disapproval from this source only if I

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<sup>46</sup> Manuscript in progress.

have acted so as to promote this structure. It follows that an ordinary rich inhabitant of an unjustly unequal society need not make transfers to the poor in order to escape such condemnation. For unless a person is staggeringly rich, she cannot alter her population's distribution over a set of types and typical situations just by holding onto her money or giving it away. Other people will take no note of her isolated donations as they decide how to live; they will go on making the decisions that reproduce the advantages to which she owes her wealth, however she disposes of it. By retaining her wealth, then, she cannot intend to secure any particular complex of relations with poorer people. She is sitting on it because to let it go would be directly costly for her, and this motive for retaining it is not condemned.

The distinction between my view on individual duties of justice and its alternatives is a subtle, yet important one. Schouten and A. J. Julius both argue that any kind of individual duties of justice only arises when individuals are able to make the *basic structure*<sup>47</sup> more just. Otherwise, we do not need to be concerned about how our actions affect the justice of the pattern of distribution, or of the state of affairs, or the realization of values of justice. This is my disagreement with them. I think we do have duties to be concerned about, and sometimes regulate our actions to promote the justice of the state of affairs, or the realization of values of justice, even when we are not able to alter the basic structure. Before presenting arguments for my view, I need to clarify a few points and respond to some objections.

First, views of permissive liberals are typically accused of being too demanding. Schouten claims that the statist, or what she calls the stingy view “enables liberals to endorse demanding principles of justice for institutions without imposing correlative demands of justice

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<sup>47</sup> Which for Schouten only includes institutions and perhaps for A. J. Julius can include both institutions and social norms.

on individuals.” In arguing for the primacy of the basic structure, Rawls says that if “this division of labor can be established, individuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system that necessary corrections to preserve background justice are being made.”<sup>48</sup> Scheffler refers to this as Rawls’s “division of moral labor” and defends it by stressing the plurality of values and moral principles that apply to individual conduct, which carries the implicature that alternatives of Rawls’s view cannot account for the plurality of values and moral principles that apply to individual conduct. A.J. Julius accuses Liam Murphy’s monism,<sup>49</sup> which I take to be a permissive view, of leaving no room for the suspicion that philanthropy is irrelevant to justice.<sup>50</sup>

Any reasonable permissive view should not claim that principles and values of justice are the only moral principles and values that govern and inform individual conduct. Believing that individual duties of justice include more than the duty to support and promote just basic structure does not commit one to hold that justice makes the same exact demands on individuals as it does on institutions, or that duties of justice are the only moral duties that individuals have, or that duties of justice leaves no room for individuals’ pursuits of their own projects and interests. Even if duties of justice are more expansive and demanding according to my view compared to the stingy views, which is not totally clear as I will show later, duties of justice still need to be weighed against other moral duties that individuals have including those arising from special relationships, and their self-centered prerogatives and right to basic liberties.<sup>51</sup> Furthermore,

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<sup>48</sup> Rawls (2001), 269.

<sup>49</sup> For Murphy, monism is the denial of the claim that the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle. See Liam Murphy, “Institutions and the Demands of Justice.” *Philosophy & Public Affairs* 27, no. 4 (1998): 251–91.

<sup>50</sup> A. J. Julius, 346.

<sup>51</sup> Samuel Scheffler develops the concept of “agent-centered prerogative” in *Rejection of Consequentialism*. Cohen further discusses related issues and objections in *Rescuing Justice and Equality*, 387-393.

permissive liberals can leave room for philanthropy. It is just that the conception and extension of the notion of philanthropy are different so that what is regarded as philanthropy by many people are not real acts of philanthropy on their conceptions. I will say more about this at the end of the paper.

Stingy liberals may make a further criticism. Concepts such as self-centered prerogatives are too vague. We are not able to know the content of them and how to weigh various duties with prerogatives. First, I do not think that it is theoretically impossible to work out the content of self-centered prerogatives and find principled weighing methods. One difficulty is that we have different kinds of self-centered prerogatives in different domains of our lives because different types of fundamental goods are available and should be promoted in different domains of our lives. Therefore, we should not count on or hope for a global account of how our duties weigh against prerogatives and rights but can only work out the puzzle piece by piece. Harry Brighouse and Adam Swift's account of familial relationships goods and the ethics of parent-child relationships inform us a great deal about how duties of justice should be weighed against parents' interests and duties as well as children's interests.<sup>52</sup> Similarly, we can develop accounts of fundamental goods in other relationships and other domains of our lives such as work and leisure and give plausible accounts of how duties, rights and prerogatives limit and modify each other to create all-things-considered duties in each domain of our lives.

Moreover, the stingy liberals themselves may be subject to the same criticism that they make to the permissive liberals. All the stingy liberals I have discussed so far admit that individuals have duties of justice to support and promote a just basic structure. Although it is relatively easy to specify the duty to support the just structure in a well-ordered society, it is not

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<sup>52</sup> Harry Brighouse and Adam Swift. *Family Values: The Ethics of Parent-Child Relationships*. Princeton University Press, 2014.

as easy to specify the content and the extent of the duty to promote just structure in an unjust society. A lot hinges on what promoting amounts to. It is not clear that stingy liberals can just say that individuals are obligated to make the basic structure significantly more just *only* when they are able to do so and otherwise have no duties of justice when they are not. Each individual's norm-complying behavior sustains unjust norms and perhaps partially constitutes the norms. Even if the norms would not be changed when only one or some individuals' behaviors change, it is not clear why sustaining unjust norms does not count as a form of promoting unjust norms. If individuals have duties of justice to promote a just basic structure, why don't they have duties of justice not to promote an unjust basic structure? And if you are convinced by my arguments in the previous section that the basic structure should include some social norms, why don't individuals have duties not to sustain unjust social norms by defying them?

Again, I am not suggesting that all-things-considered, we are morally prohibited to comply with any unjust norm or participate in any unjust system. Sometimes relinquishing our role in an unjust system imposes costs on our fundamental interests and goods that are too huge for us to bear in an unjust world. Capitalist systems may be such examples. In these cases, we do not commit moral wrongs by remaining in the systems, although duties of justice guide and demand more of us in more favorable circumstances. But there are many cases in which refraining from complying to unjust social norms or giving away some amount of wealth would not sacrifice too much of the fundamental interests and goods in our lives. I do not think that stingy liberals have offered strong enough arguments for why duties to promote justice, or not to sustain injustice, do not have any implications in these cases. Even if A.J. Julius is right that many who are complicit in unjust structures and norms do not do so for the sake of sustaining injustice, it is not clear why only intentions matter and we do not need to be worried about

consequences of these behaviors at all. Surely most of the times individual actions do not result in significant change in the basic structure, but in many cases, they can have a non-negligible impact on the justice of the state of affairs, or the realization of values of justice, or the wellbeing of lives that grounds values of justice. A multimillionaire cannot alter the basic structure by donating 20% of her wealth, but the distribution of wealth would become more just and the wellbeing of many lives would be significantly improved if she did so.

Schouten has suggested that the distinction between her version of the stingy view and permissive views in terms of the content and extent of individual duties of justice may be a mere technicality. That may be true for ideal-theorizing in a well-ordered society. I hope I have demonstrated some substantial differences between these views for non-ideal theorizing in an unjust world. Now let me provide a positive argument for my view. Individuals are obligated to be concerned about how their actions affect the justice of the state of affairs and the realization of values of justice besides effects on the basic structure in an unjust world, even though the obligation is constrained by other rights and prerogatives. The argument I am giving builds on duties of justice in a well-ordered society. As all types of liberals can agree, individuals in a well-ordered society have a natural duty to support the just basic structure. This duty not only requires behaviors complying with their just institutions and norms. It also requires a certain kind of psychological profile, which includes sufficient concerns for others' wellbeing and for the values of justice, as well as some concern for the interests of oneself and the special people in one's life. This necessary psychological profile motivates justice-supporting behaviors and partially constitutes support of the just basic structure. A well-ordered society would not exist without justice-supporting individuals who have this kind of psychological profile. So individuals having this kind of psychological profiles is constitutive of a well-ordered society.



Individuals in an unjust society have duties to make their society more similar to a well-ordered one. Most liberals agree on that and call those “duties of justice”. It follows that individuals in an unjust society have a duty to make their psychological profiles more similar to those in a well-ordered society because those psychological profiles partially constitute a well-ordered society, along with a just basic structure. Individuals also have substantial control over their own psychological profiles unlike the basic structure. So the vast majority of people, putting aside tragic cases of exceptions, are able to do at least one thing that constitutes progress towards a well-ordered society and is entailed by their duties of justice – shaping their own psychological profiles. If the more advantaged in an unjust society are usually better able to shape their own psychological profiles than others are, this would increase the extent of their duties.

Most liberals also agree that individual conduct should be guided by a plurality of values and normative principles, for instance, the value of integrity and the principle of behaving in ways that are consistent with one’s overall value system. Thus, individuals in an unjust society have a duty, derivative from duties of justice combined with duties of virtues, to behave in accordance with psychological profiles that are the same as those of people in a well-ordered society. This does not imply that individuals in an unjust society are obligated to behave exactly the same as those in a well-ordered society. The same absolute and relative levels of concern for the interests of our own and those special to us would likely permit us to, for instance, keep more wealth, in an unjust society compared to a well-ordered one. One can usually attain a higher level of wellbeing and lead a more flourishing life in a well-ordered society with the same amount of material, relational, and cultural resources compared to being in an unjust society because of, among others, social structures and norms that are more just, respectful, and caring in a well-

ordered society, even holding the level of efficiency or wealth of the society constant. But the upshot is that the duty to behave in accordance with the kind of psychological profile present in a well-ordered society makes demands on individual actions that originate from the values of justice and exceeds beyond promoting the justice of the basic structure.

At this stage of the discussion, we might be tempted to think that it does not matter whether the duty I have argued for is a duty of justice or beneficence. As long as we recognize the duty, it might not matter how we categorize it. But I can think of a few reasons to retain it in the category of duties of justice. First, given the above argument, sources of the duty have to do with values of justice and a well-ordered society in addition to the wellbeing and benefits of particular people that would be good to improve. Second, some believe that duties of justice are more stringent than duties of beneficence perhaps because of the first reason. I do not believe that *all* duties of justice are enforceable or should be enforced, while some are and should. But we can still think that some moral duties, such as duties of justice, are more stringent and should be given more weight than other moral duties like duties of beneficence. Lastly, acts of beneficence usually deserve and call for attitudes and acts of gratitude from the benefited while acts of justice deserve other attitudes such as respect and admiration from everyone especially when they are difficult and costly to perform. In this aspect, the duty I have argued for more appropriately belongs to the category of duties of justice. Going back to the distinction between philanthropy and justice. Permissive views like my own would imply that many acts we typically see as philanthropic would be acts of justice instead. They still deserve positive evaluations. The differences are we have stronger reasons to perform them and when we do, we deserve respect and sometimes admiration from the whole society rather than gratitude from the directly benefited.

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